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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,631	06/19/2001	Thomas G. Hunter	HUNTER-101	3032

7590

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EXAMINER

RINES, ROBERT D

ART UNIT

PAPER NUMBER

3626

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/884,631

Applicant(s)

HUNTER, THOMAS G.

Examiner

Robert D. Rines

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Notice to Applicant***

[1] This communication is in response to the application filed on 19 June 2001. Claims 1-11 are pending.

### ***Drawings***

[2] The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Applicant uses the designation "arrow 50" to identify "therapy control signals supplied to the wireless device" on page 7, line 22 of the specification. However, "arrow 50" is not labeled in the figures. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

[3] Dependent Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim dependency on another preceding claim. As written, dependent claim 8 is self-dependent and is therefore rendered indefinite. The examiner assumes a typographical error and requests that the appropriate corrections are made on amendment. For the purpose of applying art, the examiner will interpret claim 8 as being dependent from claim 5.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

[4] Claims 1, 3, 9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Ballantyne et al. (United States Patent #5,867,821).

(A) As per claim 1, Ballantyne discloses a method for limiting embarrassment of having health care services provided to a patient in secure environs (Ballantyne; col. 7, line 66 to col. 8, line 5; col. 8, lines 7-10), comprising the steps of:

providing a wireless channel from the patient to a server for the provision of information related to the health care service to be provided (Ballantyne; Fig. 1; col. 1, lines 55-63; col. 1, line 65 to col. 2, line 23; and col. 9, lines 1-15)

fulfilling the health care service responsive to the output by the server (Ballantyne; col. 4, lines 29-47; note that health care services and/or medical information include x-ray, MRI video images, patient laboratory data, educational/training information, etc.), whereby patient privacy

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is maintained without the patient having to move out of the secure environs (Ballantyne; col. 7, line 66 to col. 8, line 5; col. 8, lines 7-10).

(B) As per claim 3, Ballantyne discloses that a health care service includes the delivery of information relative to the health care service (e.g., video or instructional materials on new pharmaceuticals) directly to the patient (Ballantyne; col. 5, lines 47-51).

(C) As per claim 9, Ballantyne further includes the step of the server ascertaining the appropriateness of the health care service requested (Ballantyne et al.; col. 14, lines 36-44).

(D) As per claim 11, Ballantyne's health care services are taken from the group consisting of medical devices, medical information, medicines, medical procedures, and medical treatments (Ballantyne; col. 4, lines 29-47).

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[5] Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne, as applied to claim 1 above, in view of Joao (United States Patent #6,283,761).

(A) As per claim 2, Ballantyne teaches the ordering and delivery of health care services including "third party services". Ballantyne further specifies that included in "third party services" are Chaplin visit requests, florists, convenience store, and medical services such as physiotherapy as well as other "custom services" (Ballantyne column 10, lines 5-10). Although a reasonable assumption could be made that "custom services" would include the provision of

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healthcare products and/or medical devices tailored to the needs of a specific patient group, such as those suffering from incontinence, and would therefore reasonably include medical devices used in the treatment and management of incontinence, Ballantyne does not specifically teach the delivery of medical devices directly to the patient.

(i) However, Joao teaches the ordering and delivery of healthcare services including health care devices and delivery thereof direct to the patient (Joao, col. 31, lines 33-42, and Fig. 10). In Joao, a patient requesting such goods and products is linked through the central server with a supplier of such goods thus enabling a transaction resulting the delivery of healthcare goods or products, including medical devices, directly to the patient (Joao; col. 32 lines 15-17 and lines 20-29).

(ii) One of ordinary skill in the art would have found it obvious, at the time of invention, to include the ordering of health care goods and products, including medical devices, of Joao within the Ballantyne system. The motivation to combine the teachings would have been to provide for the finding and/or locating of "supplies, body organs, blood, medications, and/or any other goods, products and/or supplies" (Joao, col. 6, lines 13-20).



[6] Claims 4-6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne, as applied above, in view of Lemelson (United States Patent # 5,738,102).

(A) As per claim 4, Ballantyne teaches the provision of a wireless channel from the patient to a server for the provision information related to a health care service to be provided and fulfillment of the service responsive to the output of the server, as described above. Ballantyne does not teach the administering of a treatment under control of the server.

(i) However, Lemelson teaches the administration of treatment under control of a computer/server (Lemelson; Abstract).

(B) As per claim 5, included in Lemelson is the sending of signals from the server to the patient (col.1, lines 17-42 Note: Lemelson sends signals between the patient and a server/computer for monitoring and computer analyzing physiological variables of a patient in order to automatically administer treatment under computer control).

(C) As per claim 6, Lemelson teaches the sending step including utilization of the wireless channel (Lemelson; col. 4, lines 40-45).

(D) As per claim 8, Lemelson does not teach a billing function associated with automated treatment under computer control. However, Ballantyne teaches the step of wirelessly obtaining

authorization for the billing associated with the health care service (Ballantyne; col. 4, lines 45-49: NOTE: included in Ballantyne's teachings is the wireless transmittal of billing and inventory control services.) NOTE: Examiner is assuming dependency of claim 8 to be from claim 5.

(i) Regarding claims 4-6 and 8, one of ordinary skill in the art would have found it obvious at the time of invention, to implement the automated patient monitoring and treatment under computer control functions of Lemelson within the electronic healthcare/patient management and billing system of Ballantyne. The motivation to combine the teachings would have been to administer treatment automatically under computer control (Lemelson; col. 1, lines 40-42). Further motivation to combine the teachings would have been to predict the onset of a serious, life threatening physiological condition or a number of conditions some time before they occur to permit medical steps to be taken by a doctor or nurse and/or by a computer, to prevent the actual onset of the condition (Lemelson; col. 2, lines 35-41).

[7] Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne and Lemelson as applied to claims 4-6 above, and further in view of Joao.

(A) As per claim 7, Ballantyne teaches the use of a "communications interconnection system" for data/information transfer from peripheral computers to and from the server configuration but does not specifically teach the use of the Internet in such capacity (Ballantyne; col. 2, lines 1-10). Similarly, although Lemelson teaches the sending of signals between the patient and the server to

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achieve automatic treatment under computer control, Lemelson does not specifically teach the use of the Internet.

(i) However, Joao teaches that his invention can be utilized on, or over, the Internet and/or the World Wide Web and/or on, or over, any other communication network or system, including, but not limited to, a communication network system, a telecommunication network or system, a telephone communication network or system, a cellular communication network or system, a wireless communication network or system, a wireless Internet network or system, a wireless World Wide Web network or system (Joao; col. 3, lines 53-61).

(ii) It would have been obvious to one of ordinary skill in the art at the time of invention to take advantage of the apparent applicability of the Internet as a communications interconnection means between computers in any networked healthcare and/or patient management system, as described by Joao. The motivation would have been to transmit data and/or information via widely used protocols over the Internet (Joao; col. 15, lines 47-53).

[8] Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne, as applied above, in view of Gombrich (United States Patent #4,835,372).

(A) As per claim 10, although Ballantyne teaches the step of the server ascertaining the appropriateness of the health care service to be provided but fails to specifically teach the storing

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of diagnosis for the patient at the server for the purpose of ascertaining the appropriateness of the health care service to be provided.

(i) However, Gombrich teaches the storing of diagnosis information for the purpose of ascertaining the appropriateness of the health care service requested by the health care provider (Gombrich et al.; Abstract and col. 2, lines 36-41).

(ii) One of ordinary skill in the art would have found it obvious at the time of invention to apply the use of patient diagnosis, as in Gombrich, to determine the appropriateness of treatment for the specific patient within the technological/communications infrastructure described by Ballantyne. The motivation to combine the teachings would have been to provide for cross-checking and verifying patient specific procedures in order to ensure that the treatment items properly correspond to the identified patient (Gombrich, col. 2, lines 39-43).

### ***Conclusion***

[9] The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bondell et al., System For Treatment Of Enuresis (United States Patent # 5,074,317); Landis et al., Method For Managing Data Transfer Between Computing Devices (United States Patent # 5,588,148); Engelson et al., System And Method For Collecting Data And Managing Patient Care (United States Patent # 5,781,442); Brown, Remote Health Monitoring And Maintenance System (United States Patent # 6,168,563); Mosher et al., Wireless Communication Product Fulfillment System (United States Patent # 6,393,408); Kieval et al., Implantable

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Medical Device For Tracking Patient Cardiac Status (United States Patent # 6,529,771); Sarwal et al., Method And System For Neuromodulation Therapy Using External Stimulator With Wireless Communication Capabilities (United States Patent # 6,662,052).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert D. Rines whose telephone number is 571-272-5585. The examiner can normally be reached on 8:30am - 5:00pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RDR

Handwritten signature of Robert D. Rines, dated 8/7/06.

JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER